

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

RECEIVED

APR 15 2015

S.C. Supreme Court

DELEORN THOMPSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001946

APPENDIX

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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Columbia, SC 29211-1589

MEGAN HARRIGAN
Assistant Attorney General

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA))	COURT OF General Sessions
County of Richland)	2012-GS-40-3953
)	
)	
)	
State)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
Eugene Thompson,)	
)	
Defendant))	

May 9, 2013
Columbia, South Carolina

BEFORE:

The Honorable Robert E. Hood, Judge

APPEARANCES:

Kathryn Ashton, Asst. Solicitor
Attorney for the State

Courtney Gibbes, Esq.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

CONTENTS:

WITNESSES:

(There were no witnesses called.)

EXHIBITS:

(There were no exhibits introduced.)

CERTIFICATE OF REPORTER

14

1 Eugene Thompson, after being duly sworn,
2 testified as follows:

3 THE COURT: All right. Go ahead.

4 MS. CAVANAUGH: Thank you, Your Honor. Standing
5 before you is Eugene Thompson, represented by Courtney
6 Gibbes of the public defender's office. Kathryn
7 Cavanaugh in for the State.

8 Mr. Thompson is pleading guilty to one count of
9 armed robbery on indictment number 2012-GS-40-3953.
10 In exchange for his plea, we have negotiated a ten
11 year sentence and dismissing the other two counts that
12 are associated with the armed robbery.

13 THE COURT: Mr. Thompson, are you under the
14 influence of any alcohol or drugs today?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you been treated for any mental
17 health issues?

18 THE DEFENDANT: No, sir.

19 THE COURT: They tell me you want to plead guilty
20 to armed robbery, which carries between 10 and 30
21 years in prison; is that right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that this is a
24 violent offense?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you also understand this is a most
2 serious offense, meaning a number of things, but one
3 of them is it's a strike against you, and if you get
4 another most serious offense, you'll be a mandatory
5 life without parole?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: It also will change your
8 classification with the Department of Corrections to a
9 higher level, with more security. It's also what we
10 commonly call an 85 percent crime --- an 85 percent
11 crime --- and you will do at least 85 percent before
12 you are ever released from SCDC. Some people call it
13 a no-parole offense; does that make sense?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand all of that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you on probation or parole now?

18 THE DEFENDANT: No, sir.

19 THE COURT: Okay. When you plead guilty, you give
20 up certain important constitutional rights. The first
21 is your right to remain silent. Do you understand
22 that right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you want to give up that right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: The second is your constitutional
2 right to a jury trial. Do you understand that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you want to give up that right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The third is your right to confront
7 your accusers, present any defense you may have, and
8 call witnesses on your own behalf. Do you understand
9 that right?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you want to give up that right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Your true billed indictment states
14 that you did in Richland County on or about March 23rd
15 of 2012, commit a robbery by feloniously taking from
16 the person of Raul Cruz-Vega by means of force or
17 intimidation, goods or monies of him, that being
18 a 2008 Dodge Ram truck with the intent to permanently
19 deprive him while armed with a deadly weapon. How do
20 you plead to that charge?

21 THE DEFENDANT: Guilty.

22 THE COURT: Now, this is what we call a
23 negotiated plea and that has a very specific meaning
24 in the courtroom. What that means is that the
25 negotiation between you and Ms. Gibbs and the

1 solicitor is that you get a ten year sentence. Even
2 if I wanted to give you less than ten years, I
3 couldn't give you less than ten years. Even if I
4 believed you should get more than ten years, I
5 couldn't give you more than ten years. I either have
6 to take the plea and give you ten years or just decide
7 not to do that at all. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Outside of those negotiations, has
10 anybody promised you anything?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has anybody forced you or threatened
13 you to get you to plead guilty?

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you pleading guilty freely and
16 voluntarily?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you satisfied with your attorney?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Now, we had a hearing
21 earlier in the week, which we're not going to go into
22 the details of right now, but are you --- I need to
23 know if you're satisfied with Ms. Gibbes and you still
24 want to go forward with her representing you in this
25 plea?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you sure about that?

3 THE DEFENDANT: Yes.

4 THE COURT: And you want to accept the benefit of
5 this deal --- are there some charges being dismissed
6 Ms. Cavanaugh?

7 MS. CAVANAUGH: Yes, Your Honor. There were two
8 other people in the car. Those charges are being
9 dismissed in exchange for this plea.

10 THE COURT: Do you understand that these two
11 charges are being dismissed and you're just going
12 forward on the one negotiated and the sentence can't
13 get any worse? Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Is that what you want to do?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you sure about that?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you pleading guilty freely and
20 voluntarily?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has anybody threatened you or forced
23 you to get you to do this?

24 THE DEFENDANT: No, sir.

25 THE COURT: You're sure about that?

1 (Pause.)

2 THE DEFENDANT: Yes, I'm sure.

3 THE COURT: You're positive?

4 THE DEFENDANT: Yes, Your Honor, I'm positive.

5 THE COURT: Thank you very much. You and I had a
6 very candid conversation earlier in the week. You are
7 a very well spoken articulate young man. We had a
8 very good candid conversation earlier in the week and
9 I do believe you fully understand what is going on
10 here today.

11 As you did earlier in the week, you appear before
12 me now and appear to be clear and level headed and
13 straight thinking in your manner and in what you are
14 telling me. You have ten days from today's date to
15 appeal this plea, but you must do so in writing to
16 this court. Do you understand that?

17 THE DEFENDANT: Yes, sir. Judge, I got a
18 question.

19 THE COURT: Okay.

20 THE DEFENDANT: I'm not going to be on parole or
21 nothing like that, right?

22 THE COURT: It's called community supervision is
23 what I understand, and how long is it usually for,
24 Ms. Gibbes, one or two years?

25 MS. GIBBES: Two years.

1 THE COURT: Two years. So you will be monitored
2 on what's called community supervision. Now that's
3 not something that Ms. Gibbes can control or that I
4 can take away. The legislature has deemed fit that
5 anybody that pleads at this level of a crime be
6 monitored for a little bit after they finish their
7 time on their charge. Do you understand that?

8 THE DEFENDANT: I got you.

9 THE COURT: But I'm not going to add anything
10 myself in addition to the ten year sentence. I'm not
11 going to give you probation to follow or anything like
12 that. Does that make sense to you?

13 THE DEFENDANT: Yeah, I got that.

14 THE COURT: All right. Yes, ma'am?

15 MS. CAVANAUGH: Thank you, Your Honor. This
16 incident did occur on March 23rd of 2012, at the home
17 of Mr. Cruz, which is located at 5 Sherbrook Court
18 here in Richland County. The victim, Mr. Cruz, who is
19 sitting in the courtroom in the back was trying to
20 sell his 2008 Dodge Ram on the internet. Mr. Thompson
21 came to his workplace telling him that he was
22 interested in purchasing the vehicle and agreed to
23 meet at the victim's home later on to complete the
24 transaction.

25 On March 23rd of 2012, the defendant did come in

1 a taxi and behave to Mr. Cruz as if he were going to
2 buy the car. At this time the victim, his girlfriend,
3 Ms. LaStacia Sharper (phonetic) and his ten-year-old
4 daughter were also in the car with the victim. At
5 that point, the defendant pulled out a handgun and
6 demanded that he give him the keys and then sped off
7 with the vehicle.

8 A court ordered search of the phone number used
9 to contact Mr. Cruz about purchasing the car came back
10 to Eugene Thompson. The defendant, once these records
11 were obtained, the investigator with Richland County
12 drove to the defendant's home in Lexington and saw
13 that the victim's stolen Dodge Ram was located on his
14 property and they confirmed that through the VIN
15 number.

16 After Mr. Thompson was read his Miranda rights,
17 he did confess, said he did this to speed up the
18 process and he said that he used a B.B. gun to take
19 the vehicle. Mr. Thompson --- I'm sorry, Mr. Cruz,
20 the victim was able to also identify him in a photo
21 lineup and that is basically the extent of the facts
22 in this case, Your Honor.

23 THE COURT: Does he have a record?

24 MS. CAVANAUGH: He does have a record, yes. In
25 2000 Breach of Trust, 2001 three counts of grand

1 larceny and two counts of malicious injury to personal
2 property. It appears that he pled guilty to those at
3 the same time. 2001 assault and battery of a high and
4 aggravated nature; 2002, a grand larceny, in 2004 he
5 had a probation violation. I'm not sure what the
6 reason for that was. 2010 simple possession of
7 marijuana and 2011 simple possession of marijuana.

8 THE COURT: All right. Is all of that true?

9 THE DEFENDANT: (Nods in the affirmative.)

10 THE COURT: Is it materially true? For the most
11 part?

12 THE DEFENDANT: Yeah, yes, sir.

13 THE COURT: All right. I'll take his plea. I
14 find there's a substantial factual basis for the plea.
15 I further find his decision to plead guilty to be
16 freely, voluntarily, knowingly and intelligently made;
17 that he's had the advice of a very competent attorney
18 with whom he tells me he is satisfied. Ms. Gibbes?

19 MS. GIBBES: May it please the Court, Your Honor.
20 Mr. Thompson has been in jail since April 23rd
21 of 2012, which is over a year. This is a difficult
22 situation --- I know this is a difficult situation for
23 everybody. I know this has affected the victim a lot.
24 Mr. Thompson never wanted a trial in this case. He
25 has --- you are right, he is a very smart and well

1 spoken individual and has been very involved in this
2 case. We spent a lot of hours talking through this to
3 make him, you know, understand that this is --- that
4 he feels good about doing this and he was cooperative
5 at the very beginning when he was arrested. He made a
6 confession.

7 He actually has a two year old --- was
8 two-year-old son at the time in Charleston that he was
9 trying to get down to see. He obviously did the wrong
10 thing. You know, before he came up here today he had
11 the opportunity to speak to the mother of his child.
12 You can tell how much he loves his son and knows that
13 by doing this he will get out at a certain point and
14 be able to be there for his son. He cannot wait to
15 use this time to think about it and get his life
16 straight, and I really don't think he's going to get
17 into any more trouble. I think this is huge wake up
18 call for him. I know he is very sorry for what he did.
19 I would respectfully ask that you file the
20 negotiations of ten years.

21 THE DEFENDANT: Judge, Your Honor, I appreciate
22 your listening to me man on my sentencing date.

23 THE COURT: You're very welcome. Anything else
24 you'd like to tell me?

25 THE DEFENDANT: That's the rap. I'm not getting

1 in any more trouble.

2 THE COURT: All right.

3 THE DEFENDANT: Get out, be with my son.

4 THE COURT: Good luck to you.

5 THE DEFENDANT: I appreciate it.

6 THE COURT: Does Mr. Cruz want to be heard from?

7 MS. CAVANAUGH: Mr. Cruz does not wish to address
8 the court. We have been in contact throughout this
9 case about the plea negotiations and he is in
10 agreement with the negotiations to avoid a trial.

11 THE COURT: Thank you very much for participating
12 in the system and being here. I know it takes you
13 away from your work and family and other things going
14 on, and I appreciate your willingness to come up here
15 and participate in the system. Thank you.

16 Mr. Thompson, the sentence of this Court is that
17 you be committed to the State Department of
18 Corrections for a period of ten years. I'm going to
19 give you credit for all the time that you have served
20 at the county jail.

21 THE DEFENDANT: Appreciate it.

22 THE COURT: Good luck to you.

23 MS. CAVANAUGH: Thank you, Judge.

24

25

2013C P400 4874

STATE OF SOUTH CAROLINA

In the Court of Common Pleas

County of Richland

Deleorn Thompson 275974
Full name and prison number (if any) of Applicant.

vs.
State of South Carolina
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2013 AUG 19 AM 9:25
JEANETTE W. ROSS
Clerk & C.S.

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Turbeville Correctional Institution
2. Name and location of Court which imposed sentence General Sessions
Columbia SC
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2012-GS-40-03953
 - (b) 2012-GS-40-03954
 - (c) 2012-GS-40-03955
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 9th 2013 10 years 85%
 - (b) _____
 - (c) _____

16. (a) after a finding of guilty was made

- (a) after a plea of guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

7. If you answered "yes" to (6), list
 (a) the name of each Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. _____
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. _____
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) Carousas for appeal suitable for post-conviction relief
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) 4th amendment
- (b) 5th amendment
- (c) 6th amendment

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Illegal search & seizure
- (b) Due Process
- (c) ineffective assistance of counsel

11. Prior to this application have you filed with respect to this conviction

17

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?
Yes

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Motion to dismiss counsel
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. General Sessions Columbia SC
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. denied
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. MAY 6 2013
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

18

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Courtney A Gibbs 1701 Main St P.O. box 192
Columbia SC 29201
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. plea
- ii. sentencing
- iii. motion to dismiss counsel

18. State clearly the relief you seek in filing this application.

modification of offence and sentence

19. Are you now under sentence from any other court that you have not challenged?

NO

County of Richland

I, Eugene J. Thompson Eugene D. Thompson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in the application; and that the matters and allegations therein set forth are true.

Eugene J. Thompson

SWORN to and subscribed before me this 13th day of August 2013

Evelyn Hodge (L.S.)
Notary Public

My Commission Expires: 4-27-2016

RICHLAND COUNTY
FILED
2013 AUG 19 AM 9:27
JEANETTE W. HARRIS
C.C.P. & C.S.

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Eugene D. Thompson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Eugene J. Thompson
Applicant

SWORN or affirmed to and subscribed before me this 13th day of August 2013

Evelyn Hodge
Notary Public

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Eugene Deleorn Thompson, #275974,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2013-CP-40-4874

**RETURN AND MOTION FOR A MORE
 DEFINITE STATEMENT**

Respondent, making its Return to the Application for post-conviction relief filed August 19, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the August 2012 term of the Richland County Grand Jury for three counts of armed robbery (2012-GS-40-3953, -3954, -3955). Applicant was represented by Courtney A. Gibbs, Esquire. On May 9, 2013, Applicant appeared before the Honorable Robert E. Hood, where he pled guilty to one count of armed robbery. Pursuant to negotiations with the State, Judge Hood sentenced Applicant to ten years imprisonment, and the two remaining armed robbery charges were dismissed. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the transcript from Applicant's guilty plea proceeding. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, Applicant alleges that he is being held in custody for the following reasons:

1. Illegal Search and Seizure;
2. Due Process; and
3. Ineffective Assistance of counsel.

Applicant has failed to set forth *any* facts which support these grounds as required by the Uniform Post-Conviction Relief Act. Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

Respondent interprets Applicant's allegations as ineffective assistance of counsel, as Applicant has failed to set forth any specific facts giving rise to his allegations. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Applicant has wholly failed to set forth any "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of plea counsel's supposed errors. The Respondent and plea counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices the Respondent and plea counsel. The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and provide specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRCF.

IV.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

[signature block on following page]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: *Megan E. Harrigan*
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

Feb. 26, 2014.

1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
 2 COUNTY OF RICHLAND) COURT
 3)
 4 DELEORN THOMPSON,)
 5) TRANSCRIPT
 6 -V-) OF
 7) RECORD
 8 STATE OF SOUTH CAROLINA,) 2013-CP-40-4874
 9 DEFENDANT.)

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JULY 14, 2014

RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:

HONORABLE CASEY L. MANNING, JUDGE;

A-P-P-E-A-R-A-N-C-E-S:

FOR THE PLAINTIFF:

ANNA GOOD, ESQ.

FOR THE DEFENDANT:

CROOM HUNTER, ESQ.

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1 (The following proceedings were held on
2 July 14, 2014.)

3 THE COURT: Mr. Hunter.

4 MR. HUNTER: Your Honor, this is case
5 2013-CP-40-4874, Eugene Deleorn Thompson v. State of South
6 Carolina. Mr. Thompson was indicted during the August 2012
7 term of Richland County Grand Jury for three counts of armed
8 robbery. Those indictment numbers are 2012-GS-40-3953, 3954
9 and 3955. Mr. Thompson was represented by Courtney Gibbes.

10 THE COURT: All right. I misspoke then. Judge
11 Hood is the next PCR judge here?

12 MR. HUNTER: Yes, Your Honor.

13 THE COURT: Judge Hood heard your case, so it
14 probably should be continued beyond a term when Judge Hood
15 is presiding, honestly. Judge Hood was the trial judge?

16 MS. GOOD: In the last one, Your Honor, no, it was
17 Judge Goodstein, Your Honor.

18 THE COURT: He was not in the last one?

19 MR. HUNTER: Judge Hood had nothing to do with
20 this.

21 THE COURT: Okay. Good. Good. Well, excuse me,
22 at my age, I see Judge Hood and then Judge Hood is going be
23 here next time.

24 It has nothing to do with you. I'm sorry.

25 THE DEFENDANT: (The witness nodded head.)

EUGENE THOMPSON DIRECT BY MS. GOOD

1 THE COURT: Okay. Go ahead.

2 MR. HUNTER: On May 9th, 2013, Mr. Thompson
3 appeared before the Honorable Robert Hood, where he pled
4 guilty to one count of armed robbery. Pursuant to
5 negotiations with the State, Judge Hood sentenced the
6 applicant to 10 years imprisonment and the two remaining
7 armed robbery charges were dismissed. Mr. Thompson did not
8 appeal his guilty plea or his sentence. And he's
9 represented here today by Ms. Good.

10 THE COURT: All right.

11 MS. GOOD: We're ready to proceed, Your Honor.
12 Applicant calls Deleorn Thompson.

13 THE COURT: Come around, Mr. Thompson.

14 THE DEFENDANT: My own family can't even say my
15 name right.

16 THE COURT: Beg your pardon?

17 THE DEFENDANT: My own family can't even say my
18 middle name right.

19 THE COURT: That's all right. Raise your right
20 hand.

21 THEREUPON,

22 EUGENE DELEORN THOMPSON,
23 after having been duly sworn, testified as follows:

24 THE COURT: Mr. Thompson, just take a seat. Tell
25 us your full name and spell your last name for the record.

EUGENE THOMPSON DIRECT BY MS. GOOD

1 THE DEFENDANT: Eugene Deleorn Thompson.

2 Thompson, T-H-O-M-P-S-O-N.

3 THE COURT: Thank you, sir.

4 All right, Ms. Good.

5 MS. GOOD: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. GOOD:

8 Q. Mr. Thompson, you just heard Mr. Hunter say that you
9 pled to 10 years negotiated to armed robbery on May
10 9th, 2013, correct?

11 A. Yes, ma'am.

12 Q. And who was your attorney for this plea?

13 A. Ms. Courtney Gibbes.

14 Q. Okay. And had Ms. Gibbes been your attorney the entire
15 time?

16 A. Yes, ma'am.

17 Q. Okay. And, approximately, how many meetings did you
18 have with Ms. Gibbes?

19 A. About four.

20 Q. Okay. And do you remember when your first meeting with
21 her was?

22 A. I don't know exactly when, but I remember what was
23 talked about.

24 Q. Okay. And what was talked about at the first meeting
25 with her?

EUGENE THOMPSON DIRECT BY MS. GOOD

- 1 A. When she first came to see me, I remember telling her
2 that when I went to headquarters with the
3 investigators, I signed a statement which I -- which I
4 didn't read, but it was -- I didn't like the statement
5 at all. It was -- I signed a written statement. I
6 didn't write it, but I just signed papers --
- 7 Q. Okay.
- 8 A. -- because the officer told me if I didn't sign this I
9 wouldn't be able to call a lawyer, so I just signed the
10 papers.
- 11 Q. So, basically, you gave a statement to law enforcement
12 which the officer wrote and you signed that, that's
13 what you're --
- 14 A. Yes, ma'am. And I was telling Ms. Good [sic] that it
15 might be a situation with that that we ain't going to
16 like. And she told me don't worry about it because
17 it's a possibility that she can get it suppressed or
18 throw it out.
- 19 Q. Okay. And did y'all also discuss a bond reduction?
- 20 A. Yes, ma'am.
- 21 Q. Okay. And, ultimately, you had a bond reduction
22 hearing and it was reduced. After that, do you
23 remember your next contact with Ms. Gibbes?
- 24 A. It was a few months after that.
- 25 Q. Okay.

EUGENE THOMPSON DIRECT BY MS. GOOD

1 A. And when she came to see me, she gave me a plea of 10
2 years, 85.

3 Q. Okay.

4 A. And she said that we don't have to take it, so I was
5 like, okay, I'm not taking it.

6 Q. And why did she -- do you remember y'all discussing
7 that plea offer and how you come to the decision that
8 you weren't going to take the 10 years?

9 A. I wasn't -- when she told me that we didn't have to
10 take it, that's when I was like, okay, I'm not taking
11 it.

12 Q. So you went with her word on that?

13 A. Yes, ma'am.

14 Q. Okay. And what was your understanding of what was
15 going to happen after you declined that plea offer?

16 A. Well, from that point, to my knowledge, it wasn't no
17 consequences, but after that visit, she came back to me
18 and say, Well, if you don't take this 10/85, we're
19 going to -- she going to push you for trial.

20 Q. Okay. And did you want to go to trial?

21 A. At first, I didn't because, you know, 10 years is
22 better than 90, you know.

23 Q. Okay. And prior to trial, did you ever have any kind
24 of hearing regarding Ms. Gibbes' representation of you?

25 A. Yes, ma'am, a week before my plea hearing.

EUGENE THOMPSON DIRECT BY MS. GOOD.

1 Q. Okay. And what was that hearing?

2 A. What was it?

3 Q. Yes, what kind of hearing was it?

4 A. A motion to dismiss counsel.

5 Q. Okay. So a motion to relieve Ms. Gibbes as your
6 attorney?

7 A. Yes, ma'am.

8 Q. Okay. And what was the reason for that?

9 A. My reasons was I felt like she was ineffective for not
10 investigating my case.

11 Q. Okay.

12 A. And, also, she waited until that time to get me my
13 motion because it was things in my motion that I really
14 wanted to know. And my motion was filed by the
15 paralegal four months after I was arrested, but I
16 didn't get my motion until my bond reduction hearing --

17 Q. And --

18 A. -- October first.

19 Q. When you say your motion, you mean your discovery?

20 A. Yes, ma'am.

21 Q. Okay. And at any point, did you go over the discovery
22 with Ms. Gibbes?

23 A. Not at all. We never went over my motion at all.

24 Q. Okay. And after the motion to be relieved as counsel,
25 I guess, the result of that was you decided to stick

EUGENE THOMPSON DIRECT BY MS. GOOD

1 with Ms. Gibbes?

2 A. Yes, ma'am, because I went in front of -- and I hate --
3 I don't know if it's -- we went in front of Judge Hood.
4 And the only reason why I kept Ms. Gibbes was because
5 Judge Hood said if I have Ms. Gibbes relieved of my
6 case today, I won't be given another attorney.

7 Q. Okay.

8 A. And I can't go to court without no attorney.

9 Q. Okay.

10 A. So.

11 Q. At that point, did you receive your motion for
12 discovery?

13 A. I got my motion of discovery at my bond hearing.

14 Q. Okay. So that was prior to the motion to be relieved?

15 A. (The witness nodded head.)

16 Q. Okay. And after you got your motion for discovery, did
17 you notice anything in your discovery that stood out to
18 you, that you wanted Ms. Gibbes to look at?

19 A. The search of the alleged stolen vehicle and my
20 statement. Those were the two most things I pointed
21 out to Ms. Good.

22 Q. To Ms. Gibbes?

23 A. To Ms. Gibbes, I'm sorry.

24 Q. And what did you point out to Ms. Gibbes about those
25 issues?

EUGENE THOMPSON DIRECT BY MS. GOOD

1 A. On the day of my plea, I told Ms. Gibbes that I was
2 not -- I did not want to plead guilty.

3 Q. Okay.

4 A. Because these issues that -- about the legal search and
5 seizure issue and my statements, she told me the only
6 way we can attack those is if we go to trial.

7 Q. Okay.

8 A. I said, Okay, let's go to trial. But then she was
9 like, Well --

10 THE COURT: Does this apply to one or all three of
11 the armed robberies?

12 MS. GOOD: All three. It's one incident, Your
13 Honor.

14 THE COURT: Okay.

15 THE DEFENDANT: When I told her, Well, let's go to
16 trial if that's the only way I can attack my defenses, she
17 said, Well, the only way we can attack them is if we go to
18 trial and we put all this on the stand. And I said, Well,
19 let's do that then, if that's what we got to do. She said,
20 well, she never seen statements thrown out, they just don't
21 do that here in Richland County. So she said if I go to
22 trial, they going to give you 90 years. And 10 years sound
23 a whole lot better than 90 years, so I took it.

24 BY MS. GOOD::

25 Q. Okay. And when you were discussing the search and

EUGENE THOMPSON DIRECT BY MS. GOOD

1 seizure issues with her, what did you tell her
2 specifically about the search that you thought was
3 wrong?

4 A. That the officers didn't have a warrant to come in my
5 yard. The officers had an old address of 1412 Brody
6 Road. Okay, two months before I was arrested, I moved
7 a quarter mile down the road to 1444 Brody Road.

8 Q. Okay. And can you explain for the Judge a little bit
9 about how that residence is set up, where it's set up
10 in particular to the road?

11 A. Where I moved to, the whole front yard is completely
12 wooded. And the driveway, you drive between wooded
13 areas on your left and your right. And the officers
14 said -- the way he tried to justify the intrusion was
15 he said the vehicle was in plain view.

16 Q. Okay. I want to stop you real quick. The vehicle that
17 we're discussing is a truck that was considered what
18 was stolen as part of the armed robbery?

19 A. Yes, ma'am.

20 Q. Okay. And proceed regarding about where the truck was.

21 A. And the -- the only way -- what the officer seen, Your
22 Honor, was a vehicle. And he said the way it was -- it
23 was -- his justification -- he try to justify his
24 intrusion was because he said the vehicle was in plain
25 view, but even -- let's say the vehicle was in plain

EUGENE THOMPSON DIRECT BY MS. GOOD

1 view, he still had to come in my yard to verify the VIN
2 number.

3 Q. And from the road that your residence is off of, can
4 you see the driveway where the truck was parked?

5 A. No, you can't.

6 Q. Through the woods?

7 A. No, you can't.

8 Q. And you discussed all of this with Ms. Gibbes?

9 A. Yes, ma'am.

10 Q. And what was her response to that again?

11 A. She said she never seen any statements or anything
12 throwed out here in Richland County, they just don't do
13 that here.

14 Q. And did she explain or go through any law or how the
15 search and seizure issue is determined through the
16 court?

17 A. No, ma'am. I didn't even question her to be honest
18 with you.

19 Q. Okay.

20 A. I didn't even question her at all.

21 Q. So she had told you, I guess, the day of the plea down
22 in the holding cell you had just testified that you're
23 going to get 90 years and she didn't want to see you
24 get that?

25 A. Yes, ma'am.

EUGENE THOMPSON CROSS BY MR. HUNTER

1 Q. Okay. And you, ultimately, decided to plead guilty to
2 the 10 years negotiated?

3 A. Yes, ma'am.

4 Q. Okay. And I guess you're asking the Judge here today
5 to overturn your PCR based on the fact that Ms. Gibbes
6 gave you erroneous information regarding the evidence
7 surrounding the search and seizure issue?

8 A. Yes, ma'am, because if she didn't -- I based my guilty
9 plea on the advice of my attorney.

10 Q. Okay.

11 A. If she never said that, you know, she never seen
12 statements thrown out or they just don't do that here
13 in Richland County, I was going to trial like I wanted
14 to because I felt like I had a valid defense.

15 Q. Okay. Is there anything else you would like to tell
16 the Court that we may have missed or skipped over
17 regarding your PCR?

18 A. At my -- at my bond reduction hearing, I just -- I was
19 telling Mr. -- I was telling Judge Hood that all I
20 wanted was effective counsel. I just needed someone to
21 review my case with me. And, you know, I would -- if
22 he didn't tell me that I wouldn't be given another
23 attorney, I would have fired her. But the only reason
24 why I kept her was because I can't go to trial without
25 no attorney. I can't do this by myself. I don't know

EUGENE THOMPSON CROSS BY MR. HUNTER

1 nothing about no law. Only thing I know how to do is
2 read, that's all I know how to do, but I can't fight my
3 case by myself. So that's the only reason why I didn't
4 fire Ms. Good -- Ms. Gibbes that day because I -- he
5 told me I wasn't going to be given another attorney.
6 So I was kind of -- I felt like I was stuck. I had to
7 do what was best.

8 MS. GOOD: No further questions, Your Honor.

9 Please answer any questions Mr. Hunter may have.

10 CROSS-EXAMINATION

11 BY MR. HUNTER:

12 Q. Mr. Thompson, do you have a copy of the transcript from
13 your plea?

14 A. Not on me.

15 MR. HUNTER: Your Honor, permission to approach.

16 THE COURT: Yes, sir.

17 BY MR. HUNTER:

18 Q. Okay. Mr. Thompson, you testified that you knew that
19 your plea was going to be negotiated to a 10-year
20 sentence, correct?

21 A. Well, that's what -- that's what it said on my
22 sentencing sheet, but that plea was not negotiated
23 because it was either 10 or 90. There was nothing
24 negotiated about that.

25 Q. Okay. Well, Mr. Thompson, if you could please look at

EUGENE THOMPSON CROSS BY MR. HUNTER

1 your transcript, do you recall on page three, starting
2 at line 10, where it says, In exchange for his plea, we
3 have negotiated a 10-year sentence and dismissing the
4 other two counts that are associated with the armed
5 robbery?

6 A. Yes, sir.

7 Q. Okay. And then if you will turn to page five. Do you
8 recall Judge Hood, starting on line 22, telling --
9 asking you if you understood everything about the
10 negotiated plea?

11 A. Yes, sir.

12 Q. To which you responded, Yes, sir, you did understand?

13 A. Yes, sir.

14 Q. Okay. If you will turn to page three, do you recall,
15 starting on line 19, where you were told that each --
16 that your armed robbery charge could carry between 10
17 and 30 years in prison, and you responded, Yes, sir?

18 A. Yes, sir. That was -- that was only on one armed
19 robbery, but it was charging me with three armed
20 robberies.

21 Q. Right, but in exchange for your plea, they were
22 dropping two of the three armed robberies?

23 A. Okay. I didn't even know they was dropping two other
24 armed robberies because if I was going to trial, that
25 was all three armed robberies, three. Thirty times

EUGENE THOMPSON CROSS BY MR. HUNTER

- 1 three is 90, that's what they was trying to give me.
- 2 Q. Okay. Do you recall on page four, starting on line
- 3 seven, where Judge Hood told you that this was a -- you
- 4 had to serve 80 percent of your sentence?
- 5 A. Eighty -- yes, sir.
- 6 Q. Eighty-five percent?
- 7 A. Yes, sir.
- 8 Q. You responded, Yes, sir. Then the Court asked you
- 9 right after that, Do you understand all of that and you
- 10 responded, Yes, sir?
- 11 A. Yes, sir.
- 12 Q. Okay. Now, let's talk about your statement that
- 13 Ms. Gibbes told you, you know -- you said that she told
- 14 you that statements don't get thrown out in Richland
- 15 County, is that correct?
- 16 A. Yes, sir.
- 17 Q. Okay. Do you recall -- if you will turn to page five,
- 18 please, starting on line six where Judge Hood told you
- 19 that by pleading guilty, you give up your right to
- 20 present any defenses you may have?
- 21 A. Yes, sir, but I only pled guilty on advice of my
- 22 lawyer.
- 23 Q. Okay. But you do agree that Judge Hood went over this
- 24 with you?
- 25 A. Yes, sir.

EUGENE THOMPSON CROSS BY MR. HUNTER

1 Q. And you responded, Yes, sir?

2 A. Yes, sir, he did say that.

3 Q. Okay. And if you turn to page six, starting on line
4 15, do you recall where Judge Hood asked you if you
5 were pleading freely and voluntarily and you responded,
6 Yes, sir?

7 A. Yes, sir.

8 Q. Okay. And then Judge Hood asked you on line 18 if you
9 were satisfied with your attorney and you said, Yes,
10 sir?

11 A. Yes, sir.

12 Q. Okay. And then starting on line 20, Judge Hood asked
13 you if you still wanted to go forward and you said,
14 Yes, sir?

15 A. Yes, sir.

16 Q. Okay. And then he asked you again, he said, Are you
17 sure about that, and you said, Yes, sir?

18 A. And I did.

19 Q. Okay.

20 A. I want to state that if I'm under the impression by a
21 lawyer's advice, I'm not going to question my lawyer at
22 all and I'm going to feel like she is telling me right.
23 With no doubt in my mind, I'm going to feel like she is
24 telling me right. So whatever she tells me, I'm going
25 to go for it because I feel like she's choosing what's

EUGENE THOMPSON CROSS BY MR. HUNTER

1 the best interest in me.

2 Q. Well, Mr. Thompson, you understand that you were facing
3 a possible 90 years in prison and you were sentenced to
4 10 years?

5 A. Yes, sir, 10 years is a whole lot better than 90.

6 Q. Yes, sir. Okay. And then if you will turn to page
7 seven, line 15, Judge Hood asked you, Is that what you
8 want to do, talking about taking the negotiated
9 sentence. He said --

10 A. Exactly.

11 Q. Okay. And he asked you again on line 10 if you
12 understood the negotiations and you said, Yes, sir?

13 MR. HUNTER: Beg the Court's indulgence for one
14 moment.

15 THE COURT: Yes, sir.

16 BY MR. HUNTER:

17 Q. Okay. And you did confess to stealing the truck,
18 didn't you?

19 A. On my statement, what I signed, that's exactly what the
20 statement said, but that statement is not what I wrote.
21 Even though I signed it, yes, I signed it, but that is
22 not what I wrote. It's a lot of things in that
23 statement that I wanted attacked, but I did it.

24 Q. Okay. Now, if you'll turn to page 11, on line 10,
25 Judge Hood asked you in regards to -- you know, the

EUGENE THOMPSON CROSS BY MR. HUNTER

1 solicitor had just gone over the facts of the case and
2 what you were charged with and what you had allegedly
3 done. Judge Hood asked you, Is it materially true for
4 the most part? And you said, Yeah, yes, sir?

5 A. He was talking about my prior charges before that day.
6 Ms. -- my solicitor was reading my old charges to the
7 Judge and after she finished, she asked me was -- was
8 that true for the most part. And for the most part,
9 yes, it was true, my past charges of, you know, grand
10 larceny or breach of trust, things like that. That's
11 what I was saying that's true to.

12 Q. Okay. Now, did you tell your lawyer that you wanted to
13 plead guilty, that you never wanted a trial?

14 A. Could you repeat that?

15 Q. Did you ever tell your lawyer that you wanted to plead
16 guilty and that you did not want a trial?

17 A. When -- at my plea hearing, 10 minutes -- not 10
18 minutes after that we was just talking about trial, my
19 lawyer told the Judge that I did not -- I never wanted
20 a trial, but we just had been talking about going to
21 trial 10 minutes before that.

22 Q. So you're alleging that Ms. Gibbes was lying to the
23 Judge?

24 A. I'm not going to say she was lying, but she did not --
25 that was not a hundred -- that's not what happened.

EUGENE THOMPSON CROSS BY MR. HUNTER

1 Q. Okay. Now, let's go back to your prior record that the
2 Court went over.

3 MR. HUNTER: Your Honor, that's on page -- it
4 starts on the bottom of page 10 and goes on to page 11.

5 THE DEFENDANT: It starts on page what?

6 BY MR. HUNTER:

7 Q. It starts on the bottom of page 10 on line 24 and
8 continues on to page 11. And so, Mr. Thompson, you do
9 have prior convictions for assault and battery of a
10 high and aggravated nature, grand larceny, possession
11 of marijuana, among other things, is that correct?

12 A. Yes, sir.

13 Q. Okay. And you pled guilty to those charges, correct?

14 A. Yes, sir.

15 Q. So you understood at your plea -- this was not your
16 first time you ever pled to any crime?

17 A. But this was my first time having 85 -- having a
18 violent charge, too.

19 Q. Okay.

20 A. I -- I'm still not familiar with court procedure. I
21 could have been in the court 10 times with charges, I'm
22 still not going to be fully knowledgeable about court
23 procedure.

24 Q. Okay. If you will turn to page 12, line 21, do you
25 recall telling the Judge, I appreciate you listening to

EUGENE THOMPSON REDIRECT BY MS. GOOD

1 me on my sentencing date?

2 A. That was on my -- my hearing to dismiss Ms. Gibbes as
3 my counsel because he really give me a chance. He -- I
4 guess he did what he could. I guess he did what he
5 could.

6 Q. Okay. Well, right after that, on line 23, Judge Hood
7 asked you if there's anything you'd like to tell me.
8 And do you remember telling him that that's the rap and
9 I'm not getting into anymore trouble?

10 A. Yeah, I remember saying that.

11 Q. Okay. And then do you remember on page 13, line five,
12 right after Judge Hood sentenced you, you told him that
13 you appreciated it?

14 A. Oh, yes, sir.

15 Q. Okay.

16 A. Yes, sir. 10 years is a whole lot better than 90..
17 Yes, I appreciated it.

18 Q. Well, do you understand if you're granted your PCR and
19 you get a new trial, you can go back and face all three
20 armed robbery charges again and you can potentially get
21 that 90 years in prison?

22 A. Well, what -- okay. When I was charged with three
23 armed robberies, two of them armed robberies -- in
24 order for me to be charged with armed robbery,
25 something has to be taken from the vehicle. In two of

EUGENE THOMPSON REDIRECT BY MS. GOOD

1 the alleged vehicles, nothing was not taken from them.
2 So those two armed robberies is not really concern of
3 me at all.

4 Q. Okay. But -- okay.

5 MR. HUNTER: Your Honor, I don't have any further
6 questions.

7 THE COURT: All right.

8 Ms. Good.

9 REDIRECT EXAMINATION

10 BY MS. GOOD::

11 Q. Mr. Thompson, you testified earlier that you pled based
12 on your advice from Ms. Gibbes --

13 A. Yes, ma'am.

14 Q. -- about the search and seizure issue and the
15 statements, correct?

16 A. Yes, ma'am.

17 Q. During this whole time before your plea, where were you
18 being housed?

19 A. Alvin S. Glenn Detention Center.

20 Q. And is there a law library there or any way for you to
21 learn anything about the law or your case?

22 A. Yes. Yes, ma'am, but I tried like three times, but out
23 of the whole dorm -- if it's a hundred people in the
24 dorm, only two people would get a chance to go.

25 Q. Okay.

COURTNEY GIBBES DIRECT BY MR. HUNTER

1 A. It's not set up how it should be, but I guess they do
2 the best they can, but that's not even good enough
3 because I never got a chance to go to the library while
4 I was at Alvin S. Glenn.

5 Q. Okay. So you weren't able to get any information on
6 your own about the law as to the search and seizure and
7 how statements could possibly be thrown out?

8 A. No, ma'am. Not until I got to prison.

9 Q. So any information you had about that, you were taking
10 to Ms. Gibbes and taking her advice as to what the law
11 was?

12 A. Yes, ma'am.

13 Q. And is that what you based your plea on?

14 A. Yes, ma'am. When -- on the day that I was -- that I
15 was set to plea, when I telling Ms. Gibbes that I
16 didn't want to plead guilty, I told her I didn't want
17 to plead guilty because of the illegal search and
18 seizure and the statements, she said she know, but she
19 said I can do a PCR. And I said, Well, Ms. Gibbes, I
20 need help on this PCR because I know nothing about it.
21 She said when I get to the prison, there would be
22 someone in the law library to help me.

23 MS. GOOD: No further questions, Your Honor.

24 THE COURT: Anything further?

25 MR. HUNTER: No, Your Honor.

COURTNEY GIBBES DIRECT BY MR. HUNTER

1 THE COURT: All right.

2 You may step down, sir.

3 THE DEFENDANT: Excuse me, Your Honor, I want to
4 state for the record just to cover myself that if I'm just
5 so happen denied relief whenever you make your decision, I
6 would have my lawyer to file a motion to appeal.

7 THE COURT: All right. That's fine.

8 THE DEFENDANT: Just to cover myself because I do
9 not wish to waive my right to appeal.

10 THE COURT: I understand.

11 THE DEFENDANT: All right. Thank you.

12 THE COURT: You may step down.

13 MS. GOOD: The applicant has no further witnesses,
14 Your Honor.

15 MR. HUNTER: Your Honor, the State calls Courtney
16 Gibbes.

17 THEREUPON,

18 COURTNEY GIBBES,

19 after having been duly sworn, testified as follows:

20 THE COURT: Please take a seat, tell us your full
21 name and spell your last name for the record.

22 THE WITNESS: Courtney Gibbes, G-I-B-B-E-S.

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25

COURTNEY GIBBES DIRECT BY MR. HUNTER

1 BY MR. HUNTER:

2 Q. Ms. Gibbes, thank you for being here. How long have
3 you been practicing law?

4 A. A little -- about six and half years.

5 Q. Were you appointed or retained on this case?

6 A. I was appointed with the public defender's office.

7 Q. Okay. Do you remember how many times approximately you
8 met with Mr. Thompson?

9 A. I would say, at least, six.

10 Q. At least, six. Did you file all the Rule 5 and Brady
11 motions?

12 A. I did, my office did.

13 Q. Were you able to obtain all that discovery?

14 A. Yes.

15 Q. Did go over the discovery with Mr. Thompson?

16 A. Yes. He got a copy of it as well.

17 Q. Okay. And did you discuss his version of what happened
18 that day?

19 A. Yes.

20 Q. Okay. Did he have any possible defenses that y'all
21 discussed?

22 A. We did -- I mean, he's right, we did talk about the
23 statement. I don't remember discussing the search and
24 seizure issues that much because it's my recollection
25 the truck was in plain view in the front yard. The

COURTNEY GIBBES DIRECT BY MR. HUNTER

1 statement, we did discuss the Jackson V. Denno that we
2 could have prior to trial and whether or not a
3 statement was freely or voluntarily given. I don't --
4 I know I didn't tell him that it was not going to get
5 -- it definitely was not going to get thrown out, but I
6 want people to know before going to trial, I don't want
7 them to base their whole reason to go to trial in hopes
8 that the statement is going to get thrown out because
9 it is rare that it happens. So we did talk about his
10 statement and that we could present evidence and he
11 could testify at trial, pretrial.

12 Q. And the truck that was parked in his driveway had been
13 reported stolen, is that correct?

14 A. Yes.

15 Q. Okay. Did you discuss the elements of the charges?

16 A. Yes, uh-huh.

17 Q. Okay. Did -- did he give you -- did Mr. Thompson give
18 you any potential leads to investigate or witnesses to
19 seek out or anything like that?

20 A. No. I think his biggest issue was a BB gun -- I mean,
21 he was always very open that it was a BB gun and it
22 wasn't a real gun. You know, I think we spoke about
23 that there were three victims and the three different
24 charges and why there were three charges and not just
25 one. But that's, basically, what we went through the

COURTNEY GIBBES CROSS BY MS. GOOD

1 evidence.

2 Q. Okay. And prior to his plea, did you review his
3 constitutional rights and what he was going to be
4 giving up pleading guilty?

5 A. Yes.

6 Q. Okay. Did he appear to understand what you were
7 discussing with him?

8 A. Yes.

9 Q. Okay. And so whose decision was it to plead guilty?

10 A. It was his, but, I mean, he definitely was going back
11 and forth about whether or not he wanted to plead
12 guilty. So I was definitely -- I mean, he keeps saying
13 90 years, I mean, I wanted him to understand that if he
14 wanted to present defenses and things like that, it
15 would be at trial and he would be facing three armed
16 robberies at 10 to 30 each.

17 Q. Okay. And so you didn't -- did you think there was
18 any, you know, in your -- well, did you think there was
19 any merit to the search and seizure issues that he was
20 bringing up?

21 A. I did not. I mean, it was always my understanding it
22 was in plain view. And if I recall, maybe his driver's
23 license was in plain view in the truck. And they had
24 -- it was either his tag was on the back of the truck,
25 but they got to that -- got to that truck, they already

COURTNEY GIBBES CROSS BY MS. GOOD

1 knew it was the stolen struck once they got there.

2 Q. Okay. And as far as his statement that he gave to the
3 police, did you think there was any merit to his, you
4 know, claims about the statement being involuntary, so
5 to speak?

6 A. From my understanding, I thought there was Miranda. I
7 think there was an oral confession as well as a
8 written. I thought it would be difficult to get the
9 statement thrown out.

10 Q. Okay.

11 MR. HUNTER: That's all I have. Thank you.

12 THE COURT: Ms. Good.

13 MS. GOOD: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. GOOD:

16 Q. You stated that you did go over the evidence with
17 Mr. Thompson?

18 A. Yes.

19 Q. Do you remember what date that was?

20 A. I do not. He is correct that we -- I believe I did
21 give him a copy of it at his bond reduction motion,
22 which was, I believe, in May.

23 Q. Maybe August, 2012?

24 A. Something about that. Let's see, yeah.

25 Q. All right. You said --

COURTNEY GIBBES CROSS BY MS. GOOD

- 1 A. And we talked about it. Now, did I sit there and go
2 through page through page, there wasn't much to the
3 evidence. We definitely talked about it, though, what
4 was in it.
- 5 Q. And was there a search warrant in that discovery?
- 6 A. No.
- 7 Q. Okay. And where are you getting your information
8 regarding the truck being in plain view and your
9 understanding of that's what it was?
- 10 A. I don't remember if it was from the preliminary hearing
11 notes or discussing it with the solicitor, that was
12 just always my understanding that it was parked in the
13 front yard.
- 14 Q. You just discussed your preliminary hearing notes. Was
15 anybody present with Mr. Thompson at his preliminary
16 hearing?
- 17 A. Yes, it was not me, but it was -- looks like Mark
18 Sawyer and Elisha Dyer.
- 19 Q. Okay. And so it was your understanding the truck was
20 in plain view, did -- when you had this discussion with
21 Mr. Thompson about this potential search and seizure
22 issue, did he explain to you where the truck was
23 located or his belief on where the truck was?
- 24 A. I honestly don't remember discussing search and seizure
25 issue.

COURTNEY GIBBES CROSS BY MS. GOOD

1 Q. But it's possible you did?

2 A. It's possible, yes.

3 Q. Did you ever go to the scene and look at the crime
4 scene or the spot where Mr. Thompson was living and the
5 truck was taken?

6 A. I did not.

7 Q. And you said y'all had a discussion about why there was
8 three victims and why there was three charges. Can you
9 tell me about that discussion and what you told him
10 regarding armed robberies?

11 A. Basically, the issue was, I think, like he said -- and
12 I'm trying to remember exactly, that why was there
13 three victims, even though only one thing was taken,
14 the truck, that was what was taken. And the issue was
15 because they were all there. They were all in the
16 truck, the three victims were together. The gun was
17 pointed at all three of them at the same time. So
18 that's what we discussed.

19 Q. And whose truck was it?

20 A. It was the father -- I believe, it was a father, a
21 girlfriend and a child that was present.

22 Q. And that was the only thing taken, was the truck?

23 A. I believe so, and whatever else was in the vehicle.

24 Q. Okay. And you stated about his statement, that the
25 written statement, did y'all discuss that -- I guess,

COURTNEY GIBBES CROSS BY MS. GOOD

1 you said y'all discussed that statement in length. Was
2 it written by the investigator or by Mr. Thompson?

3 A. It was -- I believe it was written by the investigator
4 and signed by Mr. Thompson.

5 Q. Okay. And that would have been your defense on that,
6 is that he didn't know what he was signing?

7 A. Right.

8 Q. That he did not, actually, write that statement?

9 A. Right.

10 Q. Correct?

11 A. Correct.

12 Q. Okay. And you stated that on the day of the plea that
13 he was going back and forth about the plea, correct?

14 A. He was. During the -- the whole time -- during my
15 representation of Mr. Thompson, he wanted more time. I
16 mean, it was kind of the offer was always 10, we wanted
17 a better offer. I was trying to get a better offer.
18 The solicitor was -- she started pushing it to go to
19 trial saying the offer is not going to get better. So
20 we got to the certain point where we were, basically,
21 the week before trial. And we did a motion to be
22 relieved with Judge Hood the week before because it was
23 either -- he wanted more time, you know, he wanted to
24 get a private attorney. He just didn't understand why
25 it was going so quickly, so that's why we did the

COURTNEY GIBBES REDIRECT BY MS. HUNTER

1 motion to relieve. It wasn't necessarily he didn't
2 want to go to trial because of his defenses, it seemed
3 more like he wanted more time to make a decision.

4 Q. Okay. And you stated that day he was going back and
5 forth and you kept telling him about the 90 years,
6 correct?

7 A. I mean, obviously, I said the 90 years because he's
8 saying that a lot. I mean, I definitely don't say
9 you're definitely going to get 90 years, but I do tell
10 my clients if we go to trial, this is the evidence
11 they're going to present and it's likely you're not
12 going to get the minimum if -- because it's 10 to 30,
13 10 to 30, 10 to 30.

14 Q. And did you ever tell him that they don't ever throw
15 out statements in Richland County?

16 A. No, but I do say, you know, these are the issues with
17 your statement, this is what we would be fighting
18 against, but it's very rare. I advise them I wouldn't
19 base your whole -- you know, depending on the
20 circumstances in the case, it's rare that they get
21 thrown out, but we would have a whole hearing to fight
22 getting it in.

23 Q. And as you continuously kept telling him and advising
24 him about the potential of 90 years and not getting the
25 minimum, did he seem scared to you?

COURTNEY GIBBES REDIRECT BY MS. HUNTER

1 A. Yeah, I mean, he was definitely -- it was not a happy
2 situation.

3 Q. Okay.

4 MS. GOOD: Beg the Court's indulgence, Your Honor.

5 THE COURT: All right.

6 BY MS. GOOD:

7 Q. And any time that you discuss -- you said you don't
8 believe you discussed it a lot, the search and seizure
9 issue, did you ever discuss the plain view doctrine
10 with him and the law on that?

11 A. I recall talking about plain view. Now, did I go in
12 depth about that, I don't -- I just don't recall that
13 being a big issue that we talked about a lot.

14 MS. GOOD: No further questions, Your Honor.

15 THE COURT: Mr. Hunter, anything else?

16 MR. HUNTER: Just one question, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. HUNTER::

19 Q. Ms. Gibbes, did you explain to Mr. Thompson, you know,
20 everything that his negotiated plea would entail?

21 A. Yes.

22 Q. And that he understood that it was negotiated?

23 A. Yes.

24 Q. Okay.

25 MR. HUNTER: No further questions.

1 THE COURT: Anything further?

2 MS. GOOD: No, sir.

3 THE COURT: You can step down, Ms. Gibbes.

4 THE WITNESS: Thank you, Judge.

5 THE COURT: Anything further you'd like to say,
6 Mr. Thompson? You all right? You good?

7 (There was no response.)

8 THE COURT: And I note for the record that if your
9 PCR is denied, you want the ability to appeal?

10 THE DEFENDANT: (The witness nodded head.)

11 THE COURT: If it's denied, I'll make sure that's
12 included.

13 THE DEFENDANT: Your Honor, only thing I want to
14 say is that this plain view doctrine, I didn't find out the
15 evidence until I started going to the law library at the
16 prison I'm in. And when I go through my motion and I
17 compare the elements to the plain view doctrine in my
18 motion, the officer tried to justify his intrusion by the
19 plain view doctrine, but he cannot. He does not meet any of
20 the two requirements of the plain view doctrine. It was --
21 but now, they only have two. And, you know, one of them is
22 the initial intrusion which afforded a police officer the
23 plain view of the evidence was lawful. Number one, the only
24 way that could be lawful is that he had to have a warrant,
25 high speed chase, I was running from the police or frisk and

1 pat down, anything like that, but he could not just go off
2 hunches or guess that this is the alleged truck by coming in
3 somebody's yard and looking inside a vehicle for the VIN
4 number.

5 THE COURT: All right.

6 THE DEFENDANT: The second one is the
7 incriminating nature of the evidence was immediately
8 apparent to the seizing authorities. If it was immediately
9 apparent to the officer, he would not have to go into my
10 yard and check the VIN number. He has to verify the VIN
11 number, so, therefore, it was not immediately apparent to
12 him. And that's essential to the plain view doctrine.

13 THE COURT: All right.

14 THE DEFENDANT: Arizona v. Hicks, Your Honor, says
15 suspicion, or hunches, or guesswork of a police officer,
16 even if based in good faith are simply insufficient to
17 establish probable cause and that's exactly what the police
18 officer did. He went off hunches or guesswork, that's
19 exactly what he did. So he does not meet any of the
20 requirements of the plain view doctrine. And that was my
21 defense that I was bringing to Ms. Gibbes.

22 THE COURT: Thank you.

23 Anything further?

24 MR. HUNTER: No, Your Honor.

25 THE COURT: Thank you, Mr. Thompson. I will take

1 this under advisement. I will let you know my decision in
2 due course.. If I rule against you, and I don't know how I'm
3 going to rule yet --

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I will include in there the right to
6 your appeal. I think you have 30 days when you receive the
7 document. Do you understand?

8 THE DEFENDANT: Your Honor, one more thing, what I
9 was asking the PCR court is --

10 THE COURT: I beg your pardon?

11 THE DEFENDANT: What I was asking for if I just so
12 happen to get relief, if you just so happen to grant me
13 relief on my PCR, I was asking that the PCR court be
14 remanded to the solicitor's office for instructions to --

15 THE COURT: There's a procedure and place where
16 all of this will be taken care of, sir.

17 THE DEFENDANT: Okay. All right.

18 THE COURT: Thank you, Mr. Thompson.

19 Thank you all so very much.

20 MS. GOOD: Thank you, Your Honor.

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1 COUNTY OF RICHLAND)

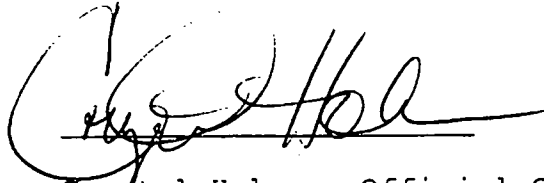
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Eugene Thompson Vs. State of SC
5 Case No. 2013-CP-40-4874, at the Richland County Courthouse,
6 November 12, 2014.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 37 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 10th day of November,
15 2014.

16 

17 Crystal Holmes, Official Court Reporter

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STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 Eugene Deleorn Thompson, #275974,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-4874

ORDER OF DISMISSAL

2014 AUG 29 AM 11:21
 JEANNETTE M. MORRIS
 CLERK, P. & G.S.
 RICHLAND COUNTY
 FILED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 19, 2013. Respondent made its return on February 26, 2014. An evidentiary hearing into the matter was convened on July 14, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Anna R. Good, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the August 2012 term of the Richland County Grand Jury for three counts of armed robbery (2012-GS-40-3953, -3954, -3955). Applicant was represented by Courtney A. Gibbs, Esquire. On May 9, 2013, Applicant appeared before the Honorable Robert E. Hood, where he pled guilty to one count of armed robbery. Pursuant to negotiations with the State, Judge Hood sentenced Applicant to ten years imprisonment, and the

SCANNED

two remaining armed robbery charges were dismissed. Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on the following grounds:

1. Illegal Search and Seizure;
2. Due Process; and
3. Ineffective Assistance of counsel.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Courtney A. Gibbes, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Richland County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified that he was represented at his plea by Courtney A. Gibbes, Esquire. Applicant testified he was offered a negotiated ten year sentence for armed robbery. Applicant testified Counsel met with him approximately four (4) times. Applicant testified that he gave a statement that was written by the officer and the Applicant signed. Applicant testified that after his bond reduction was denied, Counsel informed him of the ten year plea deal. Applicant stated he did not want to go to trial and get ninety (90) years if found guilty. Applicant testified he had a motion to relieve Counsel but decided to continue with her representation because the judge at his motion to relieve informed him he would have to proceed pro se. Applicant testified he never reviewed discovery with Counsel. Applicant testified Counsel told him the chances of getting the search of the truck suppressed were low. Applicant

testified Counsel told him his chances of getting the witness statements suppressed were low. Applicant testified he wants a new trial because Counsel did not challenge the search warrant and the victim statements.

On cross-examination, Applicant testified he knew he was pleading to a ten year negotiated sentence. Applicant testified two other charges were dismissed in exchange for his plea. Applicant testified he knew he was facing up to ninety (90) years. Applicant testified he understood he would have to serve 85% of his sentence. Applicant testified he understood he gave up his right to challenge the evidence by pleading guilty. Applicant testified he told the plea judge he was satisfied with Counsel. Applicant testified ten years is a lot better than ninety years. Applicant testified that he did confess to stealing the vehicle in his statement to police.

Following Applicant's testimony, Courtney Gibbes, Esquire (Counsel) was called to testify. Counsel testified she has been practicing for six and a half years. Counsel testified she was appointed to Applicant's case while working as a public defender. Counsel testified she met with Applicant at least six times and filed all necessary motions. Counsel testified she received discovery and went over it with Applicant after his bond reduction hearing. Counsel testified she also gave Applicant a copy of his discovery. Counsel testified she discussed Applicant's statement and the likelihood that it would not be suppressed. Counsel testified there were no legitimate reasons to suppress the search of the truck. Counsel testified Applicant made the decision to plead guilty. Counsel testified Applicant was facing a total exposure of ninety years in prison on his charges. Counsel testified she never told Applicant the statements could not be thrown out, but that it was rare. Counsel testified she discussed the plain view doctrine with Applicant.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any

prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

This Court finds that Counsel met with Applicant multiple times prior to the guilty plea. This Court finds Applicant understood he was pleading to a ten year sentence. This Court finds Applicant understood he was facing ninety years in prison. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court finds Counsel explained to Applicant the terms of his plea and the fact that if he went to trial he was facing up to ninety years in prison. This Court finds Counsel's belief that there was not a good chance of having the search of the truck or the statements suppressed was reasonable. This Court finds there were no reasonable grounds on which to have the search suppressed.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

INVOLUNTARY GUILTY PLEA

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a

guilty plea “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

This Court finds Applicant has failed to demonstrate that his guilty plea was entered involuntarily.

This Court finds Applicant testified he was satisfied with Counsel’s services. Applicant told the plea judge he had complete trust in Counsel and did not want to go to prison for ninety years. Applicant testified that he told the plea judge he appreciated the judge listening to him at the plea and he appreciated the sentence. This Court finds Applicant was aware he would have to serve 85% of his sentence. This Court finds Applicant understood when he pled that he was giving up the right to challenge the evidence against him. This Court finds Applicant’s plea was entered freely and voluntarily. Finally, this Court finds Applicant understood his plea was a negotiated ten year sentence, and it was Applicant’s decision to plead guilty..

Accordingly, this Court finds Applicant’s guilty plea was knowingly and voluntarily entered. This Court finds that the evidence presented at the evidentiary hearing as well as

contained within the guilty plea transcript clearly supports a finding that the guilty plea was not coerced or involuntary; rather, it was freely, knowingly, and voluntarily entered. This Court finds Applicant was informed of the nature and elements of the offenses with which he was charged and to which he pled guilty. This Court further finds that Applicant was fully apprised of the rights he was forfeiting in order to plead guilty and that Applicant decided to go forward with his guilty plea.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

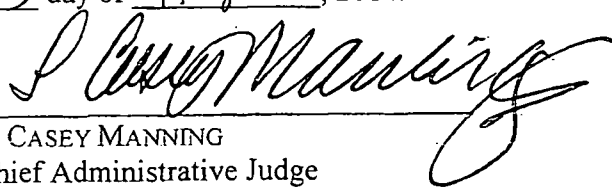
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.

Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13 day of AUGUST, 2014.


L. CASEY MANNING
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

WITNESSES

(S) Inv. Joseph Clarke - RCSD

DOCKET NO. 2012-GS-40-03953

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2012

116

THE STATE
vs.

Eugene D. Thompson

ARREST WARRANT NUMBER

M987034

ACTION OF GRAND JURY

TRUE BILL

Gail R. Koenig
Foreperson of Grand Jury
Date: AUG 15 2012

VERDICT

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

Foreperson of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

70
CENTRAL JURY
TO THE GRAND JURY
BY THE CLERK OF COURT
AUGUST 15 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on August 15, 2012, the
 Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Eugene D. Thompson did in Richland County on or about March 23, 2012, commit robbery by feloniously taking from the person or presence of Raul Cruz-Vega, by means of force or intimidation, goods or monies of Raul Cruz-Vega, such goods or monies being described as a 2008 Dodge Ram Truck, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), S.C. Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. Joseph Clarke - RCSD

DOCKET NO. 2012-GS-40-03954

The State of South Carolina

County of

Richland

ARREST WARRANT NUMBER

M987035

ACTION OF GRAND JURY

TRUE BILL

Bill R. Koenig
Foreperson of Grand Jury

Date: AUG 15 2012

VERDICT

Foreperson of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

COURT OF GENERAL SESSIONS

AUGUST TERM 2012

116

THE STATE
vs.

Eugene D. Thompson

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

WITNESSES

(S) Inv. Joseph Clarke -- RCSD

DOCKET NO. 2012-GS-40-03955

The State of South Carolina

County of

Richland

ARREST WARRANT NUMBER

M987036

ACTION OF GRAND JURY

TRUE BILL

Chill R. Koenig
Foreperson of Grand Jury
Date: AUG 15 2012

VERDICT

Foreperson of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

COURT OF GENERAL SESSIONS

AUGUST TERM 2012

116

THE STATE
vs.

Eugene D. Thompson

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

74
LINDO COUNTY
SOUTH CAROLINA
CLERK OF COURT
JAMES H. HARRIS
1000 W. BROAD ST.
COLUMBIA, SC 29201
803.732.1234

ARREST WARRANT

M-987034

STATE OF SOUTH CAROLINA
County/ Municipality of

Richland Bond Court

THE STATE RCSD#1203047523R7
against

Eugene D Thompson

address:

Home: _____
ex: M Race: B Height: 7 Weight: 180
DL #: _____

Agency ORI #: 04000
Rescuing Agency: Richland County Sheriff Department
Rescuing Officer: Joseph Clarke - 1241
Offense: Armed Robbery

Offense Code: 0139
Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to
defendant Eugene D Thompson
in 5/23/12

Signature of Criminal Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

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STATE OF SOUTH CAROLINA
 County/ Municipality of
Richland Bond Court

Personally appeared before me the affiant Joseph Clarke

being duly sworn deposes and says that defendant Eugene D Thompson
did within this county and state on or about 03/23/2012
State of South Carolina (or ordinance of County/ Municipality of
in the following particulars:

DESCRIPTION OF OFFENSE Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on or about 03/23/2012 while at _____ in the Pontiac Magisterial District of Richland County, one Eugene D.
Thompson did commit the crime of Armed Robbery / Statute Number 16-11-330. It is believed the defendant committed the crime
because the defendant has provided RCSD with a written confession of armed robbery, which occurred at the victims' home, located
at _____ in Richland County. Defendant has admitted to presenting a handgun to the victim(s). Defendant admitted to
taking at gunpoint, a 2008 Dodge pickup truck from the victim. Vehicle was valued at more than \$20,000. Affiant and others are
witness to prove same.

Handwritten signature/initials

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of
Richland Bond Court

Affiant's Address 5623 Two Notch Road
Columbia, SC 29223-
Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 3/23/2012 defendant Eugene D Thompson
did violate the criminal laws of the State of South Carolina (or ordinance of
 County/ Municipality of Richland Bond Court) as set forth below:

DESCRIPTION OF OFFENSE: Armed Robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me)
on 04/23/2012)
Judge's Address)
Judge's Telephone (803)576-3284)
M R Metts)
Judge Code: 7221)

Signature of Issuing Judge

Issuing Court: Magistrate Municipal Circuit

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Form Approved by
S.C. Attorney General
SCCA 3-18

AFFIDAVIT

Richland Bond Court

Richland Bond Court

ORIGINAL

ARREST WARRANT

M-987035

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland Bond Court

THE STATE RCSD#1203047523R7

against

Eugene D Thompson

address:

Home: _____ SSN: _____

ex: M Race: B Height: 7 Weight: 180

L State: _____ DL #: _____

OB: _____ Agency ORI #: 04000

rescuing Agency: Richland County Sheriff Department

rescuing Officer: Joseph Clarke - 1241

Offense: Armed Robbery

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

to be arrested and brought before me to be

east with according to the law.

(L.S.)

Signature of Judge

RETURN

copy of this arrest warrant was delivered to

defendant Eugene D Thompson

on 4/23/12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions

1701 Main Street

P O Box 192

Columbia, SC 29202

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STATE OF SOUTH CAROLINA

County/ Municipality of

Richland Bond Court

Personally appeared before me the affiant Joseph Clarke

being duly sworn deposes and says that defendant Eugene D Thompson

did within this county and state on or about 03/23/2012

State of South Carolina (or ordinance of County/ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 03/23/2012 while at _____ in the Pontiac Magisterial District of Richland County, one Eugene D. Thompson did commit the crime of Armed Robbery / Statute Number 16-11-330. It is believed the defendant committed the crime because the defendant has provided RCSD with a written confession of armed robbery, which occurred at the victims' home, located at _____ in Richland County. Defendant has admitted to presenting a handgun to the victim(s). Defendant admitted to taking at gunpoint, a 2008 Dodge pickup truck from the victim. Vehicle was valued at more than \$20,000. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/23/2012 defendant Eugene D Thompson

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Richland Bond Court) as set forth below:

DESCRIPTION OF OFFENSE: Armed Robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution or as soon thereafter as is practicable

Sworn to and subscribed before me

on 04/23/12

(L.S.)

Signature of Issuing Court

M R McElis

Judge Code: 7221

Judge's Address

Judge's Telephone (803)576-3284

Issuing Court: Magistrate Municipal Circuit

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AFFIDAVIT

violate the criminal laws of the

Richland Bond Court

Form Approved by SC Admin. General Reg. 17, 2008 5010-110

ARREST WARRANT

STATE OF SOUTH CAROLINA
M-987036

County/ Municipality of
Richland Bond Court

THE STATE RCSD#1203047523R7
against

Eugene D Thompson

Address:

Phone: _____
Sex: M Race: 15 Height: 7 Weight: 180
DL State: _____ DL #: _____

DOB: _____ Agency ORI #: 04000
Prosecuting Agency: Richland County Sheriff Department
Prosecuting Officer: Joseph Clarke - 1241
Offense: Armed Robbery

Offense Code: 0139
Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of _____
The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Eugene D Thompson on 4/23/2012

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland County General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

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STATE OF SOUTH CAROLINA
 County/ Municipality of
Richland Bond Court

Personally appeared before me the affiant Joseph Clark being duly sworn deposes and says that defendant Eugene D Thompson did within this county and state on or about 03/23/2012 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Richland Bond Court) in the following particulars:

DESCRIPTION OF OFFENSE Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 03/23/2012 while in the Pontiac Magisterial District of Richland County, one Eugene D Thompson did commit the crime of Armed Robbery / Statute Number 16-11-330. It is believed the defendant committed the crime because the defendant has provided RCSD with a written confession of armed robbery, which occurred at the victims' home, located in Richland County. Defendant has admitted to presenting a handgun to the victim(s). Defendant admitted to taking at gunpoint, a 2008 Dodge pickup truck from the victim. Vehicle was valued at more than \$20,000. Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of
Richland Bond Court

Affiant's Address 5623 Two Notch Road
Columbia, SC 29223-
Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 3/23/2012 defendant Eugene D Thompson did violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Richland Bond Court) as set forth below:

DESCRIPTION OF OFFENSE: Armed Robbery

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 04/23/2012 (L.S.)
Signature of Issuing Judge M R Metts
Judge Code: 7221

Judge's Address

Judge's Telephone (803)576-3284

Issuing Court Magistrate Municipal Circuit

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AFFIDAVIT

Joseph Clark

Eugene D Thompson

Richland Bond Court

violate the criminal laws of the

Form Approved By
S.C. Attorney General
April 21, 2003
SCCA 318

2012 APR 18 PM 1:44
RICHLAND COUNTY